

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11526 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

MOHAMMED ANIS @ KANIYO	TAFZULKHAN PATHAN
Versus	
COMMISSIONER OF POLICE	AHMEDABAD

Appearance:

1. Special Civil Application No. 11526 of 2003
MR CHETAN B RAVAL for Petitioner No. 1
MR RM CHAUHAN Ld. AGP for Respondent No. 1-3
-

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 17/09/2003

ORAL JUDGEMENT

By way of this special civil application, the petitioner has challenged the order of detention passed against him by the Police Commissioner, Ahmedabad City on

23.12.2002 under the exercise of powers under sec. 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "the PASA Act" for short).

The detaining authority, as served grounds upon the detenu and placed on record, relied upon mainly two facts in reaching to subjective satisfaction. Firstly, the registration of two offences against the petitioner on 12.7.2002 and on 30.11.2002 under sec. 120B, 202 and 119 of IPC and under sec. 25 of the Arms Act and under sec. 3,4, and 5 of the Explosives Act. The second aspect which the detaining authority took into consideration is the in-camera statements recorded by the detaining authority on 15.12.2002 wherein the witness revealed the incidents of 9.11.2002 and 15.11.2002 wherein it is alleged by the witnesses that on suspicion that the witnesses were offering information to the police in respect of petitioner about to attack on "Rathyatra". The witnesses were beaten and public order around was disturbed. From the above material, the order impugned in this petition was passed by the detaining authority on 23.12.2002.

Ld. advocate Ms. Datta for Mr. CB Raval for the petitioner and Ld. AGP Mr. Chauhan were heard at length. Ld. AGP places on record the affidavit in reply filed by the detaining authority which is taken into consideration.

Out of many contentions raised on behalf of the petitioner and controverted by the ld. AGP, the matter can be disposed of on the ground that whether subjective satisfaction of the detaining authority is vitiated by non-application of mind especially in respect of the judicial custody of the petitioner. It is an admitted fact on record that when the order of detention came to be served upon the petitioner, the petitioner was in judicial custody in pursuance of the offence registered against him. The detaining authority came to the conclusion that the petitioner was likely to be released on bail in the said offence and was likely to continue his illegal activity after releasing on bail. The contention is vehemently objected and controverted on behalf of the respondents by ld. AGP Mr. Chauhan. My attention was also drawn to para-5 of the affidavit in reply filed by the detaining authority. In para-5, the detaining authority has narrated that how on material placed on record, the detaining authority reached to the

subjective satisfaction. It was urged on behalf of the ld. AGP that the petitioner was indulged in heinous activity of communal disturbance and probable attack on "Rathayatra" procession. Considering the rival contentions, it clearly appears that even going through the affidavit in reply filed by the detaining authority, it is discovered that the detaining authority had no cogent material to reach to the conclusion that the petitioner was likely to be released on bail in the offence registered against him. The seriousness of the activity and the seriousness of the crime registered against the detenu, is hardly a material fact. The material fact is whether there was a cogent material before the detaining authority to reach to a particular subjective satisfaction. Ld. advocate for the petitioner makes a statement that the petitioner even did not prefer bail application in above crimes registered against him for releasing on bail. The other co-detenu who was co-accused in the above two crimes, registered against the detenu are released and the order passed against him under the PASA Act are quashed by this court. Her statement is recorded. In view of the decision of the Apex Court in the matter of Amtrilal & Ors., vs. Union Government, through Secretary, Ministry of Finance & Ors., as reported in AIR 2000 SC 3675. The order of detention is required to be quashed on this ground alone.

In the result, this special civil application is allowed. The order impugned in this special civil application passed on 23.12.2002 by the Police Commissioner, Ahmedabad City, under the PASA Act against the petitioner is quashed and set aside. The petitioner is directed to be set at liberty forthwith, if he is not required to be detained in jail for any other purpose. Rule made absolute with no order as to costs.

(J.R. VORA, J.)
mandora/